

## REMARKS

Claims 1-4, previously pending in the subject patent application, stand rejected. This amendment adds new claims 5-7. Therefore, claims 1-7 will be pending after entry of this amendment.

Formal drawings are being submitted herewith and applicants request that the enclosed sheets of drawings be substituted for those filed with the application.

### **Rejection Under 35 U.S.C. §103**

Claims 1-4 were rejected under 35 U.S.C. §103 as being unpatentable over the applicant's admission of the prior art, as further evidenced by Mani and Goglani, and in view of Ruiz, Warnock, Lynn, and Van Horn, or visa versa.

#### 1. Prior Art Does Not Suggest Claimed Combination

The present invention relates to the production of pocket bread which is formed by creating disks of dough that then are baked in an oven. During the baking, steam builds up within the dough, causing it to expand and forming a hollow cavity within the round disk. Thereafter, as the bread cools, the steam escapes forming a flat piece of soft bread. Heretofore, a plurality of these flat pieces of bread were stacked and then placed in a package for shipment to stores or restaurants.

To use a piece of that pocket bread, the consumer cuts a disk in half and pries apart the opposing walls of the bread to open up a pocket. Because the bread usually dried out before reaching the consumer, it was difficult to open the product without tearing the pocket walls. The tears defeated the ability of the bread to hold sandwich fillings.

The present invention addresses the problems with prior packaging techniques, in that after backing, while the bread is still relatively moist and flexible, the round disk is cut and the walls of the product are separated to open the pocket. The opened pieces of pocket bread are then nested one inside of each other to form a stack. This renders a product that is more readily usable by the consumer and one in which, even if drying occurs before use, the sandwich ingredients can be easily placed therein.

The Mani and Goglanian patents merely describe previous techniques for making and packaging flat pieces of pocket bread. Specifically, Goglanian teaches producing pita bread in the round, closed characteristic flat shape 34 in Figure 4 which then is packaged in a stack for sale (column 5, lines 1-4). Although a serrated disk 39 creates a line of dimples in the dough, the halves are not separated until the consumer prepares to make a sandwich (column 6, lines 1-6, Figure. 6). As a consequence, this patent does not teach cutting the bread and much less nesting pre-opened pieces.

Similarly, the Mani patent teaches creating perforations while forming the dough to provide a line along which the bread can be divided in half (column 7, lines 30-35). However, that division is performed also by the consumer and not prior to packaging, nor is there any suggestion of opening the pocket of the bread and then nesting the pieces one inside each other.

Therefore, the prior art related to pocket bread teaches nothing more than what the present application has stated is the conventional practice of stacking a plurality of closed, flat disks of the bread for shipment to the consumers, who then had to open the pocket for filling with sandwich ingredients.

Nevertheless, the rejection contends that it would be obvious to cut the pocket bread and nest the pieces one inside the other, based not on prior pocket bread usage, but on the teachings in Ruiz, Warnock, Lynn, and Van Horn which all relate to other types of food items. Of significance, is that these other food items are all baked into a rigid, open shape that naturally allows nesting to occur, without further operations. For example, Ruiz describes rigid edible bowls for taco salads. Warnock also teaches such taco bowls in Figure 1 and standard hard taco shells in Figure 3. The Lynn patent discloses a sandwich holder formed by two rigid semicircular sections 10 and 11 with curved lips which the user fits together to form a container for holding the sandwich (Figures 1 and 2). These semicircular sections of the sandwich holder are naturally open so as to nest within each other for shipment, as shown in Figures 5 and 6. The Van Horn patent describes a food holder having a series of cups made from a edible material, such as used for soda crackers or ice cream cones (column 2, lines 58-62). The end product has a very rigid structure.

The products described in the Ruiz, Warnock, Lynn and Van Horn patents have a cup like or otherwise open structure as they emerge from the baking process. That intrinsic open shape inherently is nestable with other identically shaped items. Therefore, these four secondary references to unrelated products do not suggest how or why one would nest pocket bread which is not baked in an open state and which previously has been packaged in a flat, unopened condition. As a consequence, one skilled in the art would not find it obvious based on these other food products to cut, open, and then nest the pocket bread for shipment to consumers.

New claims 5, 6 and 7 have been added to specify that the bread is allowed to cool after backing and before being nested, that the stack of pocket bread pieces is inserted into a container for shipment, and that the container and stack are frozen. The subject matter of these additional claims is supported in the paragraphs between page 3, line 15 and page 4, line 8 of the application as filed. The newly added claims are patentable for the same reasons stated above with respect to their parent claim 1. Also the cited art does not teach packaging or freezing a stack of pre-opened, nested pieces of pocket bread.

As a consequence, the rejection has not established a *prima facie* case that claims 1-7 are obvious under 35 U.S.C. §103.

## **2. Commercial Of Claimed Invention Success Demonstrates Non-Obviousness**

The commercial success of the applicants' invention further establishes the non-obviousness of the invention. In support of this argument, enclosed herewith are declarations from applicant George Kashou, Phillip Gas the Director of Deli/Bakery Operations for a grocery store chain, and Allyson Brooks a restaurateur and caterer.

The significant uniqueness and non-obviousness of the pre-opened, nested pocket bread was recognized by the food products industry. International Dairy Deli Bakery Association, presented the applicant's product with the "Best Of Show" award from among approximately 200 new product entries nationwide at the 2002 Dairy-Deli-Bake Seminar & Expo (Kashou Declaration ¶13).

Since the introduction in the third quarter of 2001 by the applicant's company, Kangaroo Brands Inc., the claimed pre-opened, nested pocket bread has been authorized for sale by approximately 80 retail grocery chains and is being sold in over 5,000 grocery stores throughout the United States (Kashou Declaration ¶7). The revolutionary pre-opened, nested pocket bread sold by Kangaroo Brands is projected to experience a 212.6% increase in sales in 2003 over 2002, in comparison to only a 8.7% increase in sales of the company's flat package pocket bread (Kashou Declaration ¶10). This makes the present product the most successful new product introduced in the history of Kangaroo Brands (Kashou Declaration ¶11). This exceptional sales record is directly related to the fact that consumers do not have to open the product thus avoiding tearing of the bread that occurred with pocket bread that is package flat (Kashou Declaration ¶8).

Users of pocket bread also have found the present invention preferable to traditional flat packed pocket bread, even though the new product is more expensive (Brooks Declaration ¶4). The pre-opened feature of this pocket bread reduces preparation time and waste (Brooks Declaration ¶3). See also the emails from users referred and attached to the Kashou Declaration.

Buyers for large grocery store chains also recognized the non-obviousness of the pre-opened, nested pocket bread. In the opinion of Phillip Gas, Director of Deli/Bakery Operations for an 85 store grocery chain, the present invention is the best product innovation in the pita bread category during his 30 year career (Gas Declaration ¶6). He recognized that the pre-opened, nested feature was a significant benefit to the consumer, and as such,

he authorized the present invention for sale in all the retail grocery stores his chain (Gas Declaration ¶6).

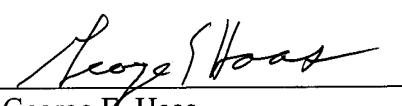
Therefore, the rapid acceptance and sales growth of the present invention, coupled with receiving a new product award from a food product manufacturers association, demonstrates the uniqueness and non-obviousness of the package and preparation method for pita pocket bread claimed in the subject patent application,

### **Conclusion**

In view of the distinctions between the subject matter of the present claims and the teachings in the cited patents and in view of the commercial success of the claimed invention, reconsideration and allowance of the present application are requested.

Respectfully submitted,  
John H. Kashou, *et al.*

Dated: December 11, 2003

By:   
George E. Haas  
Registration No. 27,642

Quarles & Brady LLP  
411 E. Wisconsin Avenue Suite 2040  
Milwaukee, WI 53202-4497  
Telephone (414) 277-5751